

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA	:	
	:	20cr52 (DLC)
-v-	:	
	:	<u>ORDER</u>
TIMOTHY WALLACE,	:	
	:	
Defendant.	:	
	:	
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DENISE COTE, District Judge:

On May 20, 2021, Timothy Wallace pleaded guilty pursuant to a plea agreement. Under that plea agreement, the parties stipulated to a Sentencing Guidelines calculation that included a two-level role enhancement for Wallace as an "organizer, leader, manager, or supervisor" of criminal activity. Sentencing was scheduled for September 16.

On August 30, Wallace sought to adjourn his sentencing and to participate in a Fatico hearing involving his co-defendant Derek Livingston scheduled for September 17. It is unlikely that arrangements can be made for two defendants and their counsel to attend the Fatico hearing on September 17 given the COVID-19 protocols in the courthouse and the difficulty of arranging for access to the courtrooms that have been reconfigured for socially distanced criminal proceedings involving multiple defendants.

In any event, Wallace has not shown that his attendance at the hearing is warranted. Unlike Wallace, Livingston pleaded guilty pursuant to a plea agreement in which the parties did not agree on the appropriate Sentencing Guidelines calculation, necessitating a Fatico hearing. On August 11, that Fatico hearing was scheduled to occur on September 17. On August 31, the Court denied Wallace's request to adjourn sentencing and participate in Livingston's Fatico hearing, noting that Wallace's request had not identified any material factual disputes necessitating his participation in a Fatico hearing and that there were none evident from his plea agreement.


Wallace renewed his request on August 31. In his August 31 letter, Wallace elaborated on the basis for his request: he reported that he had objected to certain paragraphs in his Presentence Investigation Report ("PSR") that, in his view, materially overstate his role in a drug trafficking organization, and that, in order to establish his limited role, he wishes to cross-examine one witness he expects the Government will call in Livingston's Fatico hearing. In a letter of September 1, the Government reported its view that the disputed paragraphs in the PSR do not impact the applicable Guidelines range and that Wallace's participation in the Fatico hearing is unnecessary.

A Fatico hearing is not necessary to resolve Wallace's objections to certain paragraphs in his PSR. As noted, the parties have already stipulated to Wallace's Guidelines range, and any factual disputes regarding matters in the PSR will not implicate the parties' positions on the Guidelines range. In addition, "it is well established that a district court need not hold an evidentiary hearing to resolve sentencing disputes, as long as the defendant is afforded some opportunity to rebut the Government's allegations." United States v. Broxmeyer, 699 F.3d 265, 280 (2d Cir. 2012) (citation omitted). Here, Wallace has had the opportunity to rebut the descriptions of his role contained in the PSR through written objections submitted to the Probation Department and will have further opportunity to respond to those PSR passages in his written sentencing submissions and orally at sentencing. Those opportunities are sufficient. See id. Accordingly, it is hereby

ORDERED that Wallace's request to participate in Livingston's Fatico hearing is denied. Wallace's sentencing will proceed as scheduled on September 16, 2021.

SO ORDERED:

Dated: New York, New York  
September 2, 2021

  
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DENISE COTE  
United States District Judge